

The Examiner also asserted that "Group I contains a plurality of inventions, each mutant bacterial product is represented by an individual SEQ. ID NO. that has been mutated. Each SEQ. ID NO. represents a structure that defines an independent invention based upon different structures, functions and effects" and required the Applicant to elect a single invention for examination.

In response, the Applicants elect Group I (Claims 1-33) and within group I, subject matter relating to SEQ ID N O: 3 with traverse.

REMARKS

According to the MPEP, there are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) the inventions must be independent (MPEP Section 802.01, Section 806.04, Section 808.01) or distinct as claimed (MPEP Section 806.05 - Section 806.05(i)); and (B) there must be a serious burden on the examiner if restriction is required (MPEP Section 803.02, Section 806.04(a) - Section 806.04(i), Section 808.01(a) , and Section 808.02,). Both criteria must be met, and the Applicants submit that the Examiner has failed to demonstrate that searching the subject matter of asserted Groups I and II would impose a serious burden on the Examiner.

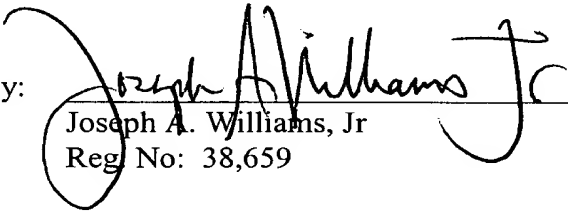
The Examiner asserted that the subject matter of Group I is classified in class 935, subclass 65, and the subject matter of Group II is classified in class 935, subclass 12. The subject matter of both Group I and Group II are therefore in the same class, with the common feature of both classes being recombinant gram-negative bacteria. The Applicant argues that because Group I and Group II fall into the same field of search, searching only two subclasses (subclass 65 and subclass 12) within class 935 does not present a serious burden to the Examiner.

With respect to the Examiner's assertion that each sequence recited in claims ascribed to Group I represents an independent and distinct invention, the Applicants submit that the Examiner has failed to put forth any reasons to support this assertion. Indeed, to the extent that the subject matter of claims in Group I and Group II falls within the same field of search, class 935, that Applicant presumes, absent evidence to the contrary, that all gram-negative bacteria containing a mutation (along with methods to make the mutated bacteria) also fall within this same class, regardless of sequence. Accordingly, a search of class 935 would reveal all such mutated bacteria (along with methods of their production) regardless of any sequence in the bacteria that is so mutated. The Applicants therefore submit, as discussed above, that this search would not place a serious burden on the Examiner and request that the restriction be withdrawn.

Respectfully submitted,

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